

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 State Bar No. 101336
AMANDA DODDS
4 Senior Legal Analyst
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2141
7 Facsimile: (619) 645-2061
Attorneys for Complainant

9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. *2013-544*

13 **EVELYN JEANNE McMACKIN,**
14 **aka EVELYN JEANNE CONGER**
15 **109 S. Trevor Avenue**
Anaheim, CA 92806

A C C U S A T I O N

16 **Registered Nurse License No. 146000**

17 Respondent.

18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
22 Consumer Affairs.

23 2. On or about September 16, 1963, the Board of Registered Nursing issued Registered
24 Nurse License Number 146000 to Evelyn Jeanne McMackin, also known as Evelyn Jeanne
25 Conger (Respondent). The Registered Nurse License was in full force and effect at all times
26 relevant to the charges brought herein and will expire on May 31, 2013, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board

1 may inquire into the circumstances surrounding the commission of the crime in order
2 to fix the degree of discipline or to determine if the conviction is substantially related
to the qualifications, functions, and duties of the licensee in question.

3 As used in this section, "license" includes "certificate," "permit," "authority,"
4 and "registration."

5 9. Section 2761 of the Code states:

6 The board may take disciplinary action against a certified or licensed nurse or
7 deny an application for a certificate or license for any of the following:

8 (a) Unprofessional conduct, which includes, but is not limited to, the
following:

9

10 (f) Conviction of a felony or of any offense substantially related to the
11 qualifications, functions, and duties of a registered nurse, in which event the record of
the conviction shall be conclusive evidence thereof.

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13 10. Section 2762 of the Code states:

14 In addition to other acts constituting unprofessional conduct within the meaning
15 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person
licensed under this chapter to do any of the following:

16

17 (b) Use any controlled substance as defined in Division 10 (commencing with
18 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous
device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner
19 dangerous or injurious to himself or herself, any other person, or the public or to the
extent that such use impairs his or her ability to conduct with safety to the public the
20 practice authorized by his or her license.

21 (c) Be convicted of a criminal offense involving the prescription, consumption,
or self-administration of any of the substances described in subdivisions (a) and (b) of
22 this section, or the possession of, or falsification of a record pertaining to, the
substances described in subdivision (a) of this section, in which event the record of
23 the conviction is conclusive evidence thereof.

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25 11. Section 2765 of the Code states:

26 A plea or verdict of guilty or a conviction following a plea of nolo contendere
27 made to a charge substantially related to the qualifications, functions and duties of a
registered nurse is deemed to be a conviction within the meaning of this article. The
28 board may order the license or certificate suspended or revoked, or may decline to
issue a license or certificate, when the time for appeal has elapsed, or the judgment of

1 conviction has been affirmed on appeal or when an order granting probation is made
2 suspending the imposition of sentence, irrespective of a subsequent order under the
3 provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his
or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of
guilty, or dismissing the accusation, information or indictment.

4 REGULATORY PROVISIONS

5 12. California Code of Regulations, title 16, section 1444, states:

6 A conviction or act shall be considered to be substantially related to the
7 qualifications, functions or duties of a registered nurse if to a substantial degree it
8 evidences the present or potential unfitness of a registered nurse to practice in a
manner consistent with the public health, safety, or welfare. Such convictions or acts
shall include but not be limited to the following:

9 (a) Assaultive or abusive conduct including, but not limited to, those violations
10 listed in subdivision (d) of Penal Code Section 11160.

11 (b) Failure to comply with any mandatory reporting requirements.

12 (c) Theft, dishonesty, fraud, or deceit.

13 (d) Any conviction or act subject to an order of registration pursuant to Section
290 of the Penal Code.

14 13. California Code of Regulations, title 16, section 1445 states:

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16 (b) When considering the suspension or revocation of a license on the grounds
17 that a registered nurse has been convicted of a crime, the board, in evaluating the
18 rehabilitation of such person and his/her eligibility for a license will consider the
following criteria:

19 (1) Nature and severity of the act(s) or offense(s).

20 (2) Total criminal record.

21 (3) The time that has elapsed since commission of the act(s) or offense(s).

22 (4) Whether the licensee has complied with any terms of parole, probation,
restitution or any other sanctions lawfully imposed against the licensee.

23 (5) If applicable, evidence of expungement proceedings pursuant to Section
24 1203.4 of the Penal Code.

25 (6) Evidence, if any, of rehabilitation submitted by the licensee.

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1 COSTS

2 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
3 administrative law judge to direct a licentiate found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
6 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
7 included in a stipulated settlement.

8 **FIRST CAUSE FOR DISCIPLINE**

9 **(February 24, 2012 Criminal Conviction for Drug-Related**
10 **Reckless Driving on May 18, 2011)**

11 15. Respondent has subjected her registered nurse license to disciplinary action under
12 sections 490 and 2761, subdivision (f) of the Code in that she was convicted of a crime that is
13 substantially related to the qualifications, functions, and duties of a registered nurse. The
14 circumstances are as follows:

15 a. On or about February 24, 2012, in a criminal proceeding entitled *People of the*
16 *State of California v. Evelyn Jeanne McMackin, aka Evelyn Conger*, in Orange County Superior
17 Court, case number 11NM11152, Respondent was convicted on her plea of guilty of violating
18 Vehicle Code section 23103, subdivision (a), pursuant to Vehicle Code section 23103.5, drug-
19 related reckless driving, a misdemeanor. The court dismissed the original charged counts of
20 violating Vehicle Code section 23152, subdivision (a), driving under the influence, and Vehicle
21 Code section 20002, subdivision (a), hit and run, pursuant to the plea agreement.

22 b. As a result of the conviction, on or about February 24, 2012, Respondent was
23 granted three years informal probation and sentenced to serve one day in jail, with credit for one
24 day. Respondent was further ordered to complete a three-month First Offender Program, pay
25 fees, fines, and restitution, and comply with the terms of DUI probation.

26 c. The facts that led to the conviction are that on or about the evening of May 18,
27 2011, officers from the Anaheim Police Department responded to a report of a suspicious vehicle
28 that had front end damage. During an interview with Respondent, the officer noted that although

1 he could not smell alcohol on Respondent's breath, she appeared to be under the influence.
2 Respondent's speech was slurred, her eyes were droopy, she had difficulty standing, and her
3 pupils were constricted. Respondent told the officer that she takes prescription medications for
4 extreme arthritis in her knees, and that she had taken one Oxycodone tablet approximately two
5 hours earlier. Respondent admitted that when she backed out of her driveway, she hit some trash
6 cans, and that she side-swiped a truck at an unknown location. No field sobriety tests were
7 performed due to Respondent's disability. Respondent was arrested for driving under the
8 influence of drugs and leaving the scene of an accident.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Use of Controlled Substances in a Dangerous Manner)**

11 16. Respondent has subjected her registered nurse license to disciplinary action under
12 section 2762, subdivision (b) of the Code for unprofessional conduct in that on or about May 18,
13 2011, as described in paragraph 15, above, Respondent used a controlled substance to an extent or
14 in a manner that was dangerous and injurious to herself, and to the public when she operated a
15 motor vehicle while impaired.

16 **THIRD CAUSE FOR DISCIPLINE**

17 **(Conviction of a Drug-Related Criminal Offense)**

18 17. Respondent has subjected her registered nurse license to disciplinary action under
19 section 2762, subdivision (c) of the Code for unprofessional conduct in that on or about February
20 24, 2012, as described in paragraph 15, above, Respondent was convicted of a criminal offense
21 involving the consumption and/or self-administration of controlled substances.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 146000, issued to Evelyn Jeanne McMackin, also known as Evelyn Jeanne Conger;
2. Ordering Evelyn Jeanne McMackin to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED:

January 8, 2013

for Anne Ben

LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

SD2012803951